

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

LUCKY COMPANY, a New Jersey partnership,
MUNCHKINS, a partnership, PETER J. CLEARY,
and LESLIE READ,

Defendants.

Adv. Pro. No. 10-04490 (SMB)

**STIPULATION AND ORDER AGREEING TO APPLY DECISION IN
THE OMNIBUS PROCEEDINGS TO THIS ADVERSARY PROCEEDING**

WHEREAS, on November 30, 2010, the plaintiff, Irving H. Picard as trustee (the “Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff individually, commenced the above-captioned adversary proceeding in the Bankruptcy Court against defendants Lucky Company,

Munchkins and Leslie Read (the “Defendants,” together with the Trustee, the “Parties”) (the “Adversary Proceeding”);

WHEREAS, on February 14, 2014 a hearing was held before the Bankruptcy Court to address the most efficient manner of litigating common legal issues and coordinating common and consolidated discovery in the hundreds of adversary proceedings pending before the Court;

WHEREAS, on February 21, 2014, the Bankruptcy Court entered the Case Management Order Regarding Certain Pending Motions to Dismiss (the “Omnibus Proceedings”);

WHEREAS, on April 17, 2014, Lucky Company and Munchkins, and on April 29, 2014, Leslie Read, moved to dismiss the Adversary Proceeding pursuant to Federal Rule of Civil Procedure 12(b)(6) made applicable by Rule 7012 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, on September 17, 2014 a hearing was held before the Bankruptcy Court to consider the common legal issues in the Omnibus Proceedings;

WHEREAS, the Defendants were neither a party to, nor joined in the Omnibus Proceedings;

WHEREAS, the Defendants’ motions to dismiss (the “Motions”) incorporate all the arguments set forth by similarly situated defendants in the Omnibus Proceedings.

WHEREAS, on June 2, 2015, the Bankruptcy Court granted in part and denied in part the Motion to Dismiss in the Omnibus Proceedings for the reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) [ECF No. 10089 in Adv. Pro. No. 08-01789 (SMB)]; and

WHEREAS, on June 22, 2015, the Supreme Court of the United States denied certiorari of the Trustee’s appeal of *SIPC v. Ida Fishman Revocable Trust*, 14-1128 and *Picard v. Ida Fishman Revocable Trust*, 14-1129 (the “Supreme Court Decision”), and thus section 546(e) of the Bankruptcy Code applies to this Adversary Proceeding.

Accordingly, it is hereby **ORDERED** that:

1. The Decision rendered in the Omnibus Proceedings applies equally to this Adversary Proceeding and such Decision disposes of the Motions filed herein.
2. In accordance with the Supreme Court Decision, (a) Counts Two, Three, Four, Five and Six of the Complaint are hereby dismissed with prejudice; and (b) Count Seven of the Complaint is dismissed without prejudice.
3. Except for the dismissal of the Counts set forth in paragraph 2, this Stipulation and Order has no effect on Count One of the Complaint.
4. Lucky Company shall file its answer to the Complaint on or before thirty (30) days after this Stipulation is so-ordered by the Court. The Adversary Proceeding will move forward thereafter on a schedule to be established by further order of the Court after consultation among the parties in accordance with the applicable rules of procedures.
5. Upon dismissal of the above Counts, the caption of the Adversary Proceeding is hereby amended to delete dismissed defendants from the caption. The amended caption of the Adversary Proceeding shall appear as indicated in Exhibit A to this Stipulation and Order.
6. This Stipulation and Order may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation and Order shall be deemed an original.

Dated: October 3, 2017
New York, New York

Of Counsel:

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SO ORDERED

By: /s/ STUART M. BERNSTEIN

Dated: October 3rd, 2017
New York, New York

**HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT A

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